IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.745 OF 1991

The Board of Trustees of the Port of Bombay, a body Corporate constituted under the provisions of the Major Port Trusts Act, 1963, as amended by the Major Port Trusts (Amendment) Act, 1974, having its principal place of business at 'Vijay Deep', Shoorji Vallabhdas Marg, Bombay 400 038.. Plaintiff

Versus

Messrs. Chhip Traders a firm carrying on business at 3/12 Pimpalwadi, Mughbhat Lane Girgaum, Bombay 400 004. .. Defendant

Mr. N.J.Manji with U.J. Makhija with i/b. Mulla and Mulla and Cr.B.C. for Plaintiff
None for defendant

CORAM : S.R. SATHE,J.
DATED : 26/03/2007

ORAL JUDGEMENT :-

1. The Plaintiff has filed this suit against the defendant firm for the recovery of the deficit port trust charges and other dues in all Rs. 2,06,971/-.

2. The Plaintiff's case in brief is as under :-

The Plaintiff is a body corporate constituted

under the provisions of Major Port Trust Act, 1963 as amended by the Major Port Trust (Amendment) Act, 1974 (hereinafter referred to as the said Act).

3. Under the provisions of the said Act, Plaintiff is required to take charge of the goods as landed from ships coming to Bombay. The Plaintiff is entitled to levy and charge wharfage, demurrage and other charges in respect of the goods landed and stored by the Plaintiff in the Docks at Bombay according to Scale of Rates duly prescribed.

4. In July-1985, the defendant imported one lot containing 10 packages of old and used condemned ships stores/iron scrap in the Import General Manifest No.1635 dated 24/07/1985 of the vessel m.v. 'Indian Glory'. The General Landing Date and the last free day of the cargo of the said vessel fell on 10/08/1985 and 14/08/1985 respectively. The defendants were bound and liable to take delivery of the said cargo and clear the same within 7 days from the date of landing. The defendant did not clear the cargo in time. Hence Plaintiff put up the said consignment for sale as per the Provisions of the said Act. Plaintiff wrote a letter dated 09/07/1987 to defendant and informed them

that the consignment was lying uncleared for two months and as such it is liable for sale as per the provisions of sections 61 and 62 of the said Act. Plaintiff also issued notice in Maharashtra Government Gazette and in Times of India dated 13/07/1987 and sold the consignment on 24/08/1987 for Rs. 1,76,000/-. The Port Trust Charges accrued on the said consignment were amounting to Rs. 2,46,290/-. Custom duty amounting to Rs. 90,976.07/-. ITC fine amounted to Rs. 2,52,100/- and expenses for sale amounted to Rs. 14,827/- after adjusting the sale price, there was deficit of Rs. 2,06,971/-. The Plaintiff addressed a letter dated 07/06/1987 to defendant and informed them about the sale of the consignment and called upon them to pay the deficit. They also informed that failing which the defendant will have to pay interest at the rate of Rs. 15% per annum till payment. Plaintiff again issued letter dated 19/07/1990. But the defendant did not pay the amount hence, Plaintiff filed the present suit.

5. In spite of service of summons to the defendant, the defendant failed to file Written Statement and the matter proceeded without Written Statement. Plaintiff was directed to file affidavit of evidence together with original necessary documents.

6. In order to prove the suit claim, Plaintiff has filed affidavit of Sanjay S. Sawant, Assistant Docks Manager. He has stated on oath that defendant's consignment landed on 10/08/1985 and last day of the cargo of the said vessel in which consignment arrived was 14/08/1985. He has also stated that notice regarding public auction which was to be held on 24/08/1987 was published in Maharashtra Government Gazette dated 16/07/1987 and in newspaper i.e. in Times of India dated 13/07/1987 and thereafter, the consignment was sold in public auction and amount of Rs. 1,76,000/- was realized out of the sale proceed. The defendants were importers of the said consignment. The defendants were also called upon by the Plaintiff to pay provisional deficit as per the statement furnished to them and informed the defendants that on their failure to make payment interest would be charged at the rate of 15% per annum. Plaintiff's witness has produced copy of the gazette as well as copies of the letters addressed to defendants. He has also produced the original letter addressed by Messrs India Steamship Company Limited to the defendants and copy endorsed to Plaintiff. He has given particulars of the claim at page-15 of the compilation. The Plaintiff's witness has

also produced the details about their charges. The entire evidence of Plaintiff's witness has gone totally unchallenged in as such as the defendant has not even filed Written Statement. There is no reason to disbelieve the Plaintiff's evidence and the documents produced by him. Thus the Plaintiffs have proved their claim of Rs. 2,09,500/-.

7. The Plaintiff has not brought on record any agreement whereby it can be seen that defendant had agreed to pay interest at the rate of Rs. 15% on their failure to make the payment of Port Trust Charges and other dues of the Plaintiff. However, it does appear that when Plaintiff called upon the defendant to pay the deficit port trust charges and other dues, they had specifically informed the defendant that if they fail to pay the amount, they will be required to pay interest at the rate of Rs. 15% per annum.

8. Having regard to all these facts and circumstances and nature of transaction and the provisions of the Interest Act, 1978 and Section 34 of the Code of Civil Procedure, I think that it is desirable to direct the defendants to pay Plaintiff interest at the rate of Rs. 9% per annum. Hence, I pass following order:-

O R D E R

(a) The defendant to pay Plaintiff Rs. 2,09,500/- and interest on Rs. 2,06,971/- at the rate of Rs. 9% per annum from the date of filing of the suit till realization of the amount.

(b) The defendant to pay Plaintiff the costs of this suit and bear their own.

(S.R. SATHE,J.)